

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**BECKLEY DIVISION**

TRACY BLEVINS,

Petitioner,

v.

CIVIL ACTION NO. 5:10-cv-00527

DAVID BERKEBILE,

Respondent.

**MEMORANDUM OPINION AND ORDER**

The Court has reviewed the Petitioner's April 20, 2010 *Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. Section 2241* (Document No. 1), as well as the *Amendment to Petitioner's Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. Section 2241* (Document No. 6) filed on May 7, 2010.

By *Standing Order* (Document No. 4) entered on April 20, 2010, this action was referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636. On November 10, 2010, the Magistrate Judge submitted *Proposed Findings and Recommendation* (Document No. 8) wherein it is recommended that this Court dismiss without prejudice the Petitioner's Petition for Writ of Habeas Corpus (Document Nos. 1 and 6) and remove this matter from the Court's docket.

Neither party has timely filed objections to the Magistrate Judge's *Proposed Findings and Recommendation*. The Court is not required to review, under a *de novo* or any other standard, the


factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and the Petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*, and **ORDERS** that the Petitioner's Petition for Writ of Habeas Corpus (Document Nos. 1 and 6) be **DISMISSED without prejudice**, and that the matter be **REMOVED** from the Court's docket.

The Court has additionally considered whether to grant a certificate of appealability. *See* 28 U.S.C. § 2253(c). A certificate will not be granted unless there is "a substantial showing of the denial of a constitutional right." *Id.* § 2253(c)(2). The standard is satisfied only upon a showing that reasonable jurists would find that any assessment of the constitutional claims by this Court is debatable or wrong and that any dispositive procedural ruling is likewise debatable. *Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Rose v. Lee*, 252 F.3d 676, 683-84 (4th Cir. 2001). The Court concludes that the governing standard is not satisfied in this instance. Accordingly, the Court **DENIES** a certificate of appealability.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge VanDervort, counsel of record, and any unrepresented party.

ENTER: April 21, 2011

  
IRENE C. BERGER  
UNITED STATES DISTRICT JUDGE  
SOUTHERN DISTRICT OF WEST VIRGINIA